

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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Cosmelina Almonte, *on behalf of herself and others*
similarly situated in the proposed FLSA Collective
Action,

Index No.: 22-cv-06048

Plaintiff,

**ANSWER WITH
AFFIRMATIVE
DEFENSES TO
COUNTERCLAIMS**

-against-

Bermeo Food Corp., Nelson Bermeo, and Arturo Bermeo,

Defendants.
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Plaintiff Cosmelina Almonte (the “Plaintiff”), by and through their undersigned attorneys, Levin-Epstein & Associates, P.C., as and for their answer and affirmative defenses to the Answer with Affirmative Defenses and Counterclaims, filed on January 26, 2023 (the “Counterclaims”) of Defendants and Counterclaimants Bermeo Food Corp., Nelson Bermeo, and Arturo Bermeo (collectively the “Defendants”, or the “Counterclaimants”), hereby admit, deny and allege as follows:

1. No response is required to the statement set forth in paragraph “1” of the Answer with Affirmative Defenses.

2. Plaintiff admits the allegations contained in paragraph “2” of the Answer with Affirmative Defenses to the extent that Plaintiff was employed at Defendants’ restaurant. Plaintiff denies the reminder of the allegations set forth in paragraph “2” of the Answer with Affirmative Defenses.

3. Plaintiff admits the allegations contained in paragraph “3” of the Answer with Affirmative Defenses to the extent that Plaintiff was employed at Defendants’ restaurant. Plaintiff

denies the reminder of the allegations set forth in paragraph “3” of the Answer with Affirmative Defenses.

4. Plaintiff admits the allegations contained in paragraph “4” of the Answer with Affirmative Defenses to the extent that Plaintiff was employed at Defendants’ restaurant. Plaintiff denies the reminder of the allegations set forth in paragraph “4” of the Answer with Affirmative Defenses.

5. Plaintiff denies the allegations set forth in paragraph “5” of the Answer with Affirmative Defenses.

6. Plaintiff denies the allegations set forth in paragraph “6” of the Answer with Affirmative Defenses.

7. Plaintiff denies the allegations set forth in paragraph “7” of the Answer with Affirmative Defenses.

8. Plaintiff denies the allegations set forth in paragraph “8” of the Answer with Affirmative Defenses.

9. Plaintiff denies the allegations set forth in paragraph “9” of the Answer with Affirmative Defenses.

10. Plaintiff denies the allegations set forth in paragraph “10” of the Answer with Affirmative Defenses.

11. Plaintiff denies the allegations set forth in paragraph “11” of the Answer with Affirmative Defenses.

DEFENDANT'S FIRST COUNTERCLAIM

DEFAMATION

1. No response is required to the statement set forth in paragraph "1" of the Counterclaims.

2. The allegations contained in paragraph "2" of the Counterclaims set forth legal conclusions for which no response is required. To the extent a response is required, Plaintiff denies the allegations in paragraph "2" of the Counterclaims.

SECOND COUNTERCLAIM

TORTIOUS INTERFERENCE TO DEFENDANT'S LINE OF BUSINESS

3. No response is required to the statement set forth in paragraph "3" of the Counterclaims.

4. The allegations contained in paragraph "4" of the Counterclaims set forth legal conclusions for which no response is required. To the extent a response is required, Plaintiff denies the allegations in paragraph "4" of the Counterclaims.

PRAYER FOR RELIEF

5. Plaintiff denies that Defendants are entitled to any relief sought in the "WHEREFORE" clause.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

6. Defendants fail to state a claim, in whole or in part, upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

7. Defendants' claims are barred in whole or in part by the equitable doctrines of unclean hands, unjust enrichment, laches, offset and/or set off and/or estoppel.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

8. Defendants' claims are barred in whole or in part because Defendants have not suffered any injury or damage as a result of any actions allegedly taken by Plaintiff.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

9. To the extent Defendants suffered injury, which Plaintiff expressly denies, subject to proof through discovery, any such injury is the result of acts or omissions of such individuals, and not any act or omission of Plaintiff.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

10. Defendants' claims are barred in whole or in part to the extent that these individuals have affirmatively released, waived, or abandoned all or some of the claims raised in the Answer with Affirmative defenses and Counterclaims.

AS AND FOR A SIXTH SECOND AFFIRMATIVE DEFENSE

11. Supplemental or other jurisdiction should not be exercised over Defendants' state law claims

RESERVATION OF RIGHTS

12. Plaintiff reserves the right to raise additional affirmative defenses and to supplement those asserted herein upon discovery of further information and investigation into the Defendants' claims.

WHEREFORE, Plaintiff demands judgment in their favor:

- (a) denying Defendants are entitled to the relief for which they prays;
- (b) dismissing the Counterclaims against Plaintiff on the merits with prejudice and in its entirety;
- (c) granting Plaintiff such other and further relief as the Court may deem just and proper.

Dated: February 21, 2023
New York, New York

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